formance of which is critical to the community's welfare. It would not appear that such [an] exemption[] would pose [a] substantial threat[] that the remaining pool of jurors would not be representative of the community." 419 U.S. at 534 (citing *Rawlins* v. *Georgia*, 201 U.S. 638 (1906)). In *Duren*, this Court reiterated that "it is unlikely that reasonable exemptions, such as those based on * * * community needs, 'would pose substantial threats that the remaining pool of jurors would not be representative of the community.'" 439 U.S. at 370 (quoting *Taylor*, 419 U.S. at 534).[2]

This Court's reasoning in *Taylor* and *Duren* makes clear that neither the Jury Selection and Service Act's exclusion of state and local law enforcement officers nor the Middle District of Florida's slightly broader exemption for federal and private law enforcement officers poses a "substantial threat" to the representativeness of juries. Petitioner's attempt to liken the exemption for law enforcement officers to the States' discriminatory exemption of women, at issue in *Taylor* and *Duren*, is unavailing. In *Duren*, this Court observed that the "percentage of the community made up of the group alleged to be underrepresented" is "the conceptual benchmark for the Sixth Amendment fair-cross-section requirement" and disagreed with the lower court that jury venires containing approximately 15% women are

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[2] Petitioner criticizes the Eleventh Circuit for having relied, in its opinion in *United States* v. *Terry*, 60 F.3d 1541 (1995), cert. denied, 516 U.S. 1060 (1996), on this Court's decision in *Rawlins*, which petitioner dismisses as a "century-old case" that involved a due process, rather than a Sixth Amendment, claim. See Pet. 11-12. This Court's own reliance on *Rawlins* in *Taylor* and reiteration of that reasoning in *Duren* refutes petitioner's attempt to diminish the relevance of *Rawlins* to the court of appeals' analysis.

"reasonably representative" of a community in which women constitute 54% of the population. 439 U.S. at 364-366; see *Taylor*, 419 U.S. at 534. Although the Court has "never announced mathematical standards for the demonstration of 'systemic' exclusion" of a group, *Alexander* v. *Louisiana*, 405 U.S. 625, 630 (1972), the courts of appeals have been consistent in finding no Sixth Amendment violation in cases where the absolute disparity between a group's representation within the jury-eligible community and in the jury venire was far greater than existed here, see, *e.g.*, *United States* v. *Gault*, 141 F.3d 1399, 1402-1403 (10th Cir.) (7% absolute disparity), cert. denied, 525 U.S. 910 (1998); *United States* v. *Suttiswad*, 696 F.2d 645, 649 (9th Cir. 1982) (7.7%); *United States* v. *Tuttle*, 729 F.2d 1325, 1327 (11th Cir. 1984) (9.1%), cert. denied, 469 U.S. 1192 (1985).

The exclusion of law enforcement officers—a group that by petitioner's own estimate constitutes a mere 0.55% of the eligible jury pool—does not render a jury significantly unrepresentative of the community, and the exclusion of the smaller subset of federal and private law enforcement officers, who are exempted under the Middle District of Florida's plan but not by the Act, is even less significant. See Pet. App. 21a (concluding that even without law enforcement officers included, "the jury lists or panels are representative of the community"). As the court of appeals noted, a disparity of 0.55% "excludes, on average, less than one juror per 23-person [grand jury] panel." *Id.* at 22a. Indeed, even if there were no exception whatsoever for law enforcement officers, there would be, on average, only one law enforcement officer among every eight 23-person grand

juries, and one officer among every sixteen 12-person petit juries.

The court of appeals' decision upholding the Jury Selection and Service Act's exclusion of law enforcement officers, as applied by the Middle District of Florida, is fully consistent with *Taylor* and *Duren*.[3]

2. Petitioner's challenge to the court of appeals' determination that "a significant [government] interest is manifestly and primarily advanced," *Duren*, 439 U.S. at 367, by the law enforcement exemption— *i.e.*, "allowing police officers to perform their duties without the interruption of jury service," Pet. App. 21a, does not warrant review by this Court. Contrary to petitioner's claim (Pet. 12) that excluding police officers from jury service "is not justified in today's society," the courts below correctly held that there is a vital societal interest in having law enforcement officers on the streets, performing their role of protecting the public. Petitioner's criticism of a presumption he characterizes as one that society can "never spare a law enforcement officer for jury duty" overlooks the cumulative impact on scarce law enforcement resources that would result from those offi-

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[3] Although the court of appeals did not reach this issue, the court of appeals' result was also correct for the additional reason that petitioner failed to establish a *prima facie* case. In *Duren*, this Court held that "any [exemption] category expressly limited to a group in the community of sufficient magnitude and distinctiveness so as to be within the fair-cross-section requirement—such as women—runs the danger of resulting in underrepresentation sufficient to constitute a prima facie violation of that constitutional requirement." 439 U.S. at 370. As noted above, petitioner's own estimate puts law enforcement officers at 0.55% of the pertinent jury pool, which is not a community of "sufficient magnitude" to raise an issue of underrepresentation.

cials having to report for jury duty and await the jury selection process to run its course. In view of the compelling social interest in having law enforcement officials perform their jobs, there can be no genuine question that the exclusion of this occupational group is constitutionally permissible.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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